

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FRANCISCO RODRIGUEZ,

Petitioner,

v.

No. CIV 08-987 JB/GBW

ATTORNEY GENERAL OF THE
STATE OF NEW MEXICO, Gary King,

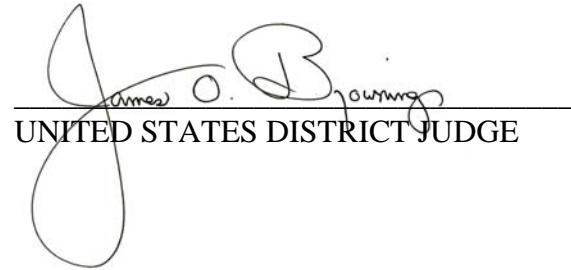
Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS IN PART AND
RECOMMENDED DISPOSITION**

THIS MATTER comes before the court on the Magistrate Judge's Proposed Findings in Part and Recommended Disposition, filed September 8, 2009 (Doc. 12). The proposed findings notify Plaintiff Francisco Rodriguez of his ability to file objections and that failure to do so waives appellate review. To date, Rodriguez has not filed any objections, and there is nothing in the record indicating that the proposed findings were not delivered.

After careful review of the record, the Court agrees with the Magistrate Judge's recommendation that the Court dismiss Rodriguez' case without prejudice because the Court lacks subject matter jurisdiction. Rodriguez has failed to demonstrate that he was "in custody", which is a jurisdictional requirement of 28 U.S.C. § 2254. Accordingly, the Court will adopt only pages 1-7 (down to "Petition is Untimely" and the recommendation at the bottom of page 16, and footnote 8 on pages 16-17.

IT IS ORDERED that Defendant's Motion to Dismiss (Doc. 8) is granted except that the case is dismissed without prejudice because this Court lacks subject matter jurisdiction.



UNITED STATES DISTRICT JUDGE

Counsel:

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